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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,362	03/28/2005	Toshiaki Kakemura	970.1011	4778
21171	7590	09/02/2008		
STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			EXAMINER BURKHART, ELIZABETH A	
			ART UNIT	PAPER NUMBER
			1792	
			MAIL DATE	DELIVERY MODE
			09/02/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/529,362

**Applicant(s)**

KAKEMURA ET AL.

**Examiner**

ELIZABETH A. BURKHART

**Art Unit**

1792

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 6-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-850)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Individual Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 3/28/05, 12/19/06, 10/26/07, 6/3/08



## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group I, Claims 1-5 in the reply filed on 7/01/2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Information Disclosure Statement***

2. The information disclosure statement filed 3/28/2005 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered. A translation or explanation of relevance was not provided for the following foreign patents: EP0741196, JP6-108255, JP8-306685, JP8-316214, JP11-181570, JP62-89869, JP62-93382, JP64-87772, JP64-87777, and JP2001-220679.

3. The information disclosure statement filed 10/26/2007 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information

referred to therein has not been considered. A translation or explanation of relevance was not provided for the following foreign patents: RU2165476 and RU2188878.

***Specification***

4. A cross-reference to related applications (Continuing Data) should be placed in the first line of the Specification.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Ito et al (JP 2000-255579).

Ito teaches a thin film forming method for plasmatizing a mixture gas, the mixture gas consisting of a monomer gas (HMDSO) and an oxidizing reactive gas (oxygen). The thin film deposited is silicon oxide. The flow amount ratio of the monomer gas with respect to the oxidizing gas is varied during deposition (Claim 1 from machine translation). The flow amount ratio decreases continuously while forming a first thin film (Claim 2). Ito also teaches a second step of forming a thin film by increasing the flow amount ratio after the first film is formed (Claim 3).

Thus, Ito describes every limitation of claims 1, 2, and 4 and thus anticipates the claims.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al (JP 2000-255579) as applied above.

Ito further teaches an initial value of the flow amount ratio may be 0.05 (Table 1). The subject matter as a whole would have been obvious to one of ordinary skill in the art at the time of invention by applicant if the overlapping portion of the flow ratio range disclosed by Ito was selected because overlapping ranges have been held to be a prima facie case of obviousness, see *In re Wortheim* 191 USPQ 90.

Thus, claim 3 would have been obvious within the meaning of 35 USC 103 over the teachings of Ito.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al (JP 2000-255579) as applied above in view of Verzaro et al ('497).

Ito further teaches forming the plasma by supplying high frequency power to an electrode (Abstract, [0040]). Ito does not teach controlling reflected power to be 10% or lower than the supplied high frequency power.

Verzaro teaches a plasma CVD method of depositing silicon oxide by plasmatizing a mixture gas, said mixture gas comprising HMDSO and oxygen (Col. 5, lines 17-20, Col. 4, lines 1-5). The plasma is formed by supplying high frequency power to an electrode through an impedance matching network. The reflected power is controlled to be 10% or lower than the supplied high frequency power in order to obtain a maximum efficiency in respect of the power supplied to the plasma (Col. 4, line 55-Col. 5, line 4).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to control the reflected power in the process of Ito as suggested by Verzaro in order to obtain a maximum efficiency in respect to the power supplied to the plasma.

Thus, claim 5 would have been obvious within the meaning of 35 USC 103 over the combined teachings of Ito and Verzaro.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH A. BURKHART whose telephone number is (571)272-6647. The examiner can normally be reached on M-Th 7-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy H. Meeks can be reached on 571-272-1423. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elizabeth A Burkhart/  
Examiner, Art Unit 1792

/Timothy H Meeks/  
Supervisory Patent Examiner, Art Unit 1792